WILFRED PLOMIS

IBLA 80-845 Decided November 20, 1980

Appeal from decision of Eastern States Office, Bureau of Land Management, dismissing protest with respect to oil and gas lease ES-17201.

Affirmed.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

   An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976).

2. Accounts: Payments -- Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination -- Oil and Leases: Generally

   In the event that some of the land applied for in an oil and gas lease offer was unavailable, the applicant was entitled to a refund of excess rental paid, and failure of BLM to return the excess rental to the offeror after the lease issuance and prior to the next annual rental being due and payable does not prevent the lease from terminating by operation of law.

APPEARANCES: Wilfred Plomis, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Wilfred Plomis, hereinafter appellant, appeals from the July 3, 1980, decision of the Eastern States Office, Bureau of Land Management

(BLM), which dismissed his protest against the automatic termination of oil and gas lease ES-17201. The lease terminated automatically by operation of law when rental due for the lease year commencing July 1, 1979, was not paid on or before the anniversary date. The lease had been issued July 1, 1978.

Appellant's noncompetitive offer to lease acquired lands for oil and gas was filed in the Eastern States Office, BLM, on April 26, 1977. The decision rejected the offer in part and recited that: "Excess rental will be refunded at the end of the appeal period if no appeal is taken." The BLM decision was not appealed. Appellant had submitted the advance rental payment of $ 142, thereby entitling him to a $ 79 refund.

Appellant's lease was deemed by BLM to have terminated by operation of law on July 1, 1979, when the annual rental was not received by BLM on or before that date. 30 U.S.C. § 188(b) (1976) and 43 CFR 3108.2-1(a). Appellant's lease was not eligible for reinstatement in that rental for the lease was not paid within 20 days of the anniversary date. 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c).

Appellant protested the termination of the lease asserting that the $ 79 excess from his 1978 rental payment should have been considered advance rental and applied toward the rental due July 1, 1979, in that BLM failed to make a refund of the $ 79 within 12 months. Appellant proffers the same argument on appeal.

[1] Section 31 of the Mineral Leasing Act, as amended by the Act of July 29, 1954, 30 U.S.C. § 188(b) (1976), provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. The regulation at 43 CFR 3108.2-1 implements this statute. Furthermore, section 17 of the Mineral Leasing Act, 30 U.S.C. § 226(d) (1976), requires that annual rental for oil and gas leases be paid in advance.

[2] Appellant's argument that the excess of his 1978 rental payment should have been considered advance rental for 1979 and applied against the amount due must be rejected. Orderly administration of the oil and gas leasing program demands that rentals be paid to BLM in a manner consonant with administrative convenience. This necessarily requires that BLM not, without prior written instruction, transfer money paid for one purpose to another use, e.g., money paid for the first year's rental to a subsequent year's rental. Logic dictates this result. It is not inconceivable that, even though a lessee is entitled to refunds from BLM exceeding the annual rental which has become due, the lessee intends positively by his nonaction to permit the lease to terminate by operation of law. 30 U.S.C. § 188(b) (1976). BLM should

not be called upon to hazard guesses as to the intentions of the lessee. This view is consonant with earlier decisions of this Department refusing to have BLM guess as to a party's intentions in oil and gas matters and making such party bear the consequences of ambiguous conduct. See, e.g., John J. Sexton, 15 IBLA 69 (1974); Ernest C. and Dora A. Carter, 12 IBLA 181 (1973); Donald Burnett, 10 IBLA 76 (1973); M. R. Carpenter, 9 IBLA 380 (1973); Helen S. Bailey, 8 IBLA 145 (1972). Other examples of that principle are embodied in Howard L. Peterson, A-30358 (February 3, 1965), in which the Department held that an oil and gas offer is properly rejected when it describes land in range 7 W., and there is no range 7 W. but there is a range 70 W. (which was intended), in the State in which the offer is filed. Cf. Jacob N. Wasserman, 74 I.D. 392 (1967); Mountain Fuel Supply Co., 13 IBLA 85 (1973); Duncan Miller, A-30788 (August 23, 1967); Charles J. Babington, A-30449 (November 30, 1965); Joe Bart Moore, A-29361 (July 1, 1963); Lendal R. Smith, Sr., A-28868 (August 10, 1962); Robert B. Schick, A-28928 (August 6, 1962); Duncan Miller A-28767 (July 23, 1962).

Therefore, pursuant to authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge